



U.S. Citizenship
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Services

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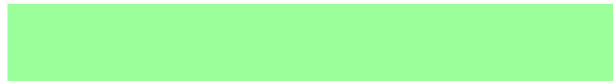


DATE: **MAR 19 2015**

OFFICE: TEXAS SERVICE CENTER

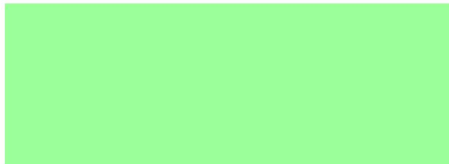
FILE: 

IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:




INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner describes itself as an IT development and consulting business. It seeks to permanently employ the beneficiary in the United States as a network manager/architect. The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

At issue in this case is that the beneficiary does not possess the required education to be classified as an advanced degree professional or to meet the minimum requirements of the offered position as set forth on the labor certification. Further, the petitioner has not established its ability to pay all of its beneficiaries from the priority dates onwards.

I. PROCEDURAL HISTORY

As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL).¹ The priority date of the petition is June 4, 2013.²

Part H of the labor certification states that the offered position has the following minimum requirements:

- H.4. Education: Master's degree in Computer Science, Electrical/Electronics, MIS, Math or Engineering.
- H.5. Training: None required.
- H.6. Experience in the job offered: 12 months in the job offered.
- H.7. Alternate field of study: None accepted.
- H.8. Alternate combination of education and experience: Yes, Bachelor's degree and six years of experience.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: Yes, Network Engineer/ Analyst, Syst Admin/ Analyst, Networking Engineer/ Mngr.
- H.14. Specific skills or other requirements: Must have experience in at least six of the following tools/ technologies and platforms: MS Exchange, Windows NT/ 2000, Active Directory, UNIX, AIX, HP-Unix, Sun Solaris, Linux, BMC, VMWare, Cloud Computing, SMS, MSI, Sharepoint, MOSS, Biztalk Server, Fatwaire, Documentum, Novell Netware 4.11/ 5.1, Weblogic, WebSphere, Iplanet, Tibco, Active Matrix, Service grid, LDAP, IIS, SAN, EMC, Web Servers, Proxy, Network Protocols, ISDN, TCP/IP, FTP, DHCP, SMTP, CISCO, Firewalls, Checkpoint, Veritas, HP Openview, Tivoli, Omniback, Legato, Netbackup, NFS, DNS, NIS, Lotus Notes, Domino, LAN/WAN, MS SQL, Server, SQL, TSQL, PL/SQL,

¹ See section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D); see also 8 C.F.R. § 204.5(a)(2).

² The priority date is the date the DOL accepted the labor certification for processing. See 8 C.F.R. § 204.5(d).

Oracle, Sybase, DB2, and various hardware like Sun, HP, IBM, DELL Servers and desktops. Employer will also consider and accept alternative suitable combination of experience and education that equips candidate with requisite level of experience and education that equips candidate with requisite level of experience and skills necessary to perform core duties of this highly senior-level and demanding job. Acceptable Alternate experience includes Network Engineer/ Analyst or Systems Administrator/ Analyst, Networking Engineer/ Manager, Infrastructure Engineer/ Manager, Technical Support Engineer, Systems/ Programmer Analyst. Frequent domestic travel.

Part J of the labor certification states that the beneficiary possesses a Bachelor's degree in Mathematics, Comp Sci & Electronic Engineering from [REDACTED] India, completed in 1998. The record contains a copy of the beneficiary's degree and transcripts from [REDACTED] India, issued in 1998, a Diploma in Electronics and Communication Engineering from the State Board of Technical Education and Training, completed in November 1991, and an Honours Diploma from the [REDACTED] completed in May 1995.

The record also contains two evaluations of the beneficiary's educational credentials prepared by [REDACTED] of [REDACTED] on February 20, 2007 and [REDACTED] of [REDACTED] on June 14, 2014.³ Both evaluations conclude that the beneficiary has the equivalent of a U.S. bachelor's degree. Mr. [REDACTED] concludes that the beneficiary holds the equivalent of a Bachelor of Science degree in Mathematics, Computer Science, and Electronic Engineering from an accredited U.S. university. He states that his conclusion is based on the number of years of coursework, the nature of the coursework, the grades attained in the courses, and the hours of academic coursework. Dr. [REDACTED] concludes that the beneficiary's 16 years of education is equivalent to a 4-year, single-source bachelor's degree in Mathematics from a U.S. university. Dr. [REDACTED] bases the conclusion on the number of years of study and credit hours undertaken by the beneficiary as well as citing a number of U.S. universities offering three-year bachelor's degrees and the acceptance of some U.S. graduate programs of three-year Indian degree holders.

Part K of the labor certification states that the beneficiary possesses the following employment experience:

- System Analyst/ Administrator with the petitioner in New Jersey from July 26, 2005 until present.

³ USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. See *id.* at 795. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. See also *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Commr. 1972)); *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011)(expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony).

- Programmer Analyst with [REDACTED] in India from September 8, 2003 until July 13, 2005.
- IT Development/ Consulting with [REDACTED] in India from July 16, 2002 until September 5, 2003.
- Unix System Administrator with the petitioner in New Jersey from February 17, 2000 until July 14, 2002.
- Senior Support Unix Administrator with [REDACTED] from July 17, 1995 until February 4, 2000.

The record contains the following experience letters:

- [REDACTED] Project Manager, on [REDACTED] letterhead stating that it employed the beneficiary as a programmer analyst from September 2003 until July 2005. (1 Year, 10 Months)
- [REDACTED] Senior Manager – HRD, on [REDACTED] letterhead stating that it employed the beneficiary as a programmer analyst from July 16, 2002 until September 5, 2003. (1 Year, 1 Month, 20 Days)
- [REDACTED] CEO on [REDACTED] letterhead stating that it employed the beneficiary as a Senior Support Unix Administrator from July 17, 1995 until April 2, 2000. (1 Year, 11 Months)⁴

On appeal and in response to our Notice of Intent to Deny (NOID), dated December 20, 2014, the petitioner states that the beneficiary possesses the foreign degree equivalent of a U.S. Bachelor's degree.

The petitioner's appeal is properly filed and makes a specific allegation of error in law or fact. We conduct appellate review on a *de novo* basis.⁵ We consider all pertinent evidence in the record, including new evidence properly submitted upon appeal.⁶ A petition that fails to comply with the technical requirements of the law may be denied by us even if the director does not identify all of the grounds for denial in the initial decision.⁷

⁴ The six years of required experience began accruing after the beneficiary received his Indian Bachelor's degree in Mathematics, Comp Sci & Electronic Engineering from [REDACTED] India, completed in 1998.

⁵ See 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); see also *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. See, e.g., *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

⁶ The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

⁷ See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

II. LAW AND ANALYSIS

Eligibility for the Classification Sought

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1).

The regulation at 8 C.F.R. § 204.5(k)(2) defines the terms “advanced degree” and “profession.” An “advanced degree” is defined as:

[A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

A “profession” is defined as “one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.” The occupations listed at section 101(a)(32) of the Act are “architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.”

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

- (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
- (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

In addition, the job offer portion of the labor certification must require a professional holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(4)(i).

Therefore, an advanced degree professional petition must establish that the beneficiary is a member of the professions holding an advanced degree, and that the offered position requires, at a minimum, a professional holding an advanced degree. Further, an “advanced degree” is a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, *or* a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty.

The petitioner relies on the beneficiary's Bachelor of Science degree from [REDACTED] combined with his professional diplomas as being the foreign equivalent of a U.S. bachelor's degree.

We have reviewed the EDGE created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." See <http://www.aacrao.org/About-AACRAO.aspx>. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." See <http://edge.aacrao.org/info.php>. USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.⁸

According to EDGE, a three-year Bachelor of Science degree from India is comparable to "two to three years of university study in the United States." EDGE further states that a post-secondary diploma is comparable to "one year of university study in the United States."

The evidence in the record demonstrates that the beneficiary has the equivalent of four to five years of university study in the U.S. However, the record does not demonstrate that the total of the beneficiary's education resulted in the issuance of the equivalent of a four-year U.S. baccalaureate degree.

We informed the petitioner in our December 20, 2014 NOID of the conclusions of EDGE. We also noted that the focus of the beneficiary's degree, as stated in the evaluations, differs, and that the evaluation from [REDACTED] failed to include the exhibits listed on the attached exhibit list. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner, in response to our NOID, does not address these concerns but submits an education evaluation prepared by AACRAO dated January 30, 2015. AACRAO concludes that the beneficiary's education is comparable to four years of undergraduate level education but does not hold any credential(s) comparable with a U.S. bachelor's degree. Therefore, the AACRAO education evaluation does not demonstrate that the beneficiary possesses the equivalent of a four-year U.S. baccalaureate degree.

⁸ In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien's three-year foreign "baccalaureate" and foreign "Master's" degrees were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc. v. USCIS*, 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

After reviewing all of the evidence in the record, it is concluded that the petitioner has failed to establish that the beneficiary possessed at least a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, or a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty. Therefore, the beneficiary does not qualify for classification as an advanced degree professional under section 203(b)(2) of the Act.

The Minimum Requirements of the Offered Position

The petitioner must also establish that the beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position by the priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate that the beneficiary has to be found qualified for the position. *Madany*, 696 F.2d at 1015. USCIS interprets the meaning of terms used to describe the requirements of a job in a labor certification by "examin[ing] the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification]" even if the employer may have intended different requirements than those stated on the form. *Id.* at 834 (emphasis added).

In the instant case, the labor certification states that the offered position requires a Master's degree plus 12 months of experience or a Bachelor's degree plus six years of experience in the position offered or as a network engineer/analyst, systems administrator/analyst, or networking engineer/manager.

For the reasons explained above, the petitioner has failed to establish that the beneficiary possesses a U.S. or foreign equivalent bachelor's degree. In addition, the petitioner has also failed to establish that the beneficiary possesses the required experience for the offered position.

Evidence relating to qualifying experience must be in the form of a letter from a current or former employer and must include the name, address, and title of the writer, and a specific description of the duties performed by the beneficiary. 8 C.F.R. § 204.5(g)(1). If such evidence is unavailable, USCIS may consider other documentation relating to the beneficiary's experience. *Id.*

As discussed above, the record contains an experience letter from [REDACTED] CEO on [REDACTED] letterhead stating that the company employed the beneficiary as a senior support Unix

administrator from July 17, 1995 to April 2, 2000; an experience letter from [REDACTED] Senior Manager – HRD, on [REDACTED] letterhead stating that it employed the beneficiary as a programmer analyst from July 16, 2002 until September 5, 2003, and; an experience letter from [REDACTED], Project Manager, on [REDACTED] letterhead stating that it employed the beneficiary as a programmer analyst from September 2003 until July 2005.

The total experience documented in these letters is less than six years. Further, in our NOID we noted that the beneficiary's education at [REDACTED] from 1994 to May 1998 overlaps with the beneficiary's claimed experience with [REDACTED] from July 1995. The petitioner did not address this in its response to our NOID.

Based on a review of the experience letters discussed above, we find that the beneficiary possesses four years and nine months of progressive work experience, which is less than the five years of post-baccalaureate experience required for classification as an advanced degree professional, and less than the six years of experience required for the proffered position.

III. CONCLUSION

In summary, the petitioner failed to establish that the beneficiary possessed an advanced degree as required by the terms of the labor certification and the requested preference classification. Therefore, the beneficiary does not qualify for classification as a member of the professions holding an advanced degree under section 203(b)(2) of the Act. Further, the petitioner has not established that the beneficiary meets the requirements for the proffered position as stated on the labor certification. The director's decision denying the petition is affirmed.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.